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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 495.

In The Matter Of:

WALTHAM WATCH CO., A Corporation, HARRY ARONSON, Individually and as an Officer of said Corporation, and LAWRENCE ARONSON as an Officer of said Corporation, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

PETITION FOR REHEARING

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January 3, 1964

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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FEDERAL TRADE COMMISSION, *Respondent.*

PETITION FOR REHEARING

Come now the Petitioners, by counsel, and pursuant to Rule 58 of the Rules of this Court, Petition For Re-Hearing Of The Order of this Court, entered the 9th day of December, 1963, denying Petition For A Writ Of Certiorari herein, and for reasons for their Petition, the following is submitted:

GROUNDS

Intervening Circumstances of Substantial or Controlling Effect

Since the filing of the Petition For A Writ Of Certiorari herein, an appeal pending in the United States Court of Appeals for the Seventh Circuit, i.e.,

Waltham Precision Instrument Company, Inc., et al v. *Federal Trade Commission*, Case No. 14022, was argued before that Court on the 9th day of December, 1963. That Court has not, as yet, entered its opinion in that case.

The corporate Respondent here, Waltham Watch Co., is also a Respondent in that case. Insofar as that corporation is concerned the order there under consideration would require this same Petitioner to cease and desist:

> 2. Using the name "Waltham" in advertising or in labeling to designate or describe watches manufactured or sold by them without expressly, clearly, conspicuously and prominently stating in immediate connection therewith the country of origin of each component of said watches which is not entirely manufactured in the United States.
>
> 3. Using, in advertising or labeling watches manufactured or sold by them, the terms, "America's first watch"; "the first American watch company", "American", or any similar word or expression to describe Respondents or such watches.

It is noted that the Order this Court considered in the Writ of Certiorari here provided that the same corporate Petitioner, Waltham Watch Co., cease and desist:

> I. Using or authorizing any person to use the name "Waltham" in connection with the sale of clocks or any other product unless it supervises said use and insures that the name is so utilized that:
>
> 1. The public is clearly warned by a statement immediately in connection therewith, that the product is not manufactured by the Waltham

Watch Company of Waltham, Massachusetts, and,

2. If the product is of foreign origin, the country of origin of the product is clearly and conspicuously disclosed on the product, on the advertising used in offering it for sale, and on any package or container in which the product is enclosed, in such manner that the name of the country of origin will not be hidden, obscured or obliterated.

H. Placing any means or instrumentality in the hands of others whereby they may mislead the public, as to the manufacture of any product which they sell, the manufacturer's age, experience and reputation or the country of origin of the product.

Although Petitioners here respect the judgment of this Court in the denial of their Application For A Writ Of Certiorari in full knowledge of the fact that the Order of the Federal Trade Commission impinging upon their property rights in the use of their trade mark establishes a novel and unprecedented invasion of commercial civil rights; nevertheless, it is here submitted that the disposition of the appeal involving one of the Petitioners here in the case pending before the Circuit Court of Appeals (Seventh Circuit) will necessarily serve to create additional novel issues that should be decided by this Court; irrespective of whether that case is affirmed or reversed.

It is manifest that reversal of the Order will place the Order in that case in conflict with the Order here and leave the Petitioners here in an untenable position by confronting them with conflicting decisions involving substantially the same type of Order.

Whereas, on the other hand, affirmance there will lead the Petitioners here into confusion as to conflicts involved in compliance with two separate and

distinct Orders relating to essentially the same subject matter involving distinct applications because of the language differences in the two orders.

This Court has decided in *Flynn* v. *United States*, 75 S. Ct. 285; 348 U.S. 909; 99 L. Ed. 998, that it will consider applications in the tenor and vein here submitted and in *Massey* v. *United States*, 291 U.S. 608; 54 S. Ct. 532, and *Sanitary Refrigerator Co.* v. *Winters*, 280 U. S. 30; 50 S. Ct. 9, that intervening circumstances of substantial or controlling effect will persuade this Court to grant a Petition For Re-Hearing. It is also clear that this Court was equally persuaded to favorably consider an application for re-hearing although substantial grounds available to Petitioner were not previously presented to the Court. *Schriber-Schroth Co.* v. *Cleveland Trust Co.*, 305 U.S. 47, 50; 59 S. Ct. 8, 9.

CONCLUSION

Wherefore, the premises considered, Petitioners pray for an Order granting this application for re-hearing for the reasons given above.

Respectfully submitted,

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CERTIFICATE

I hereby certify that the foregoing Petition For Re-Hearing is presented in good faith and not for purposes of delay.

B. PAUL NOBLE
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Petition For Re-Hearing were mailed, this 3rd day of January, 1964, first class mail, postage prepaid, to Archibald Cox, Solicitor General of the United States, Washington 25, D. C., and one copy on that same date in a like manner to John McI. Henderson, Federal Trade Commission, Washington 25, D. C.

B. PAUL NOBLE

January 3, 1964